

OUR FILE NUMBER: RC 36-29498 (JMR/RMF-6)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

TRAVELERS PROPERTY CASUALTY CO. OF
AMERICA a/s/o Bernd Goeckler Antiques Inc., and
other interested insureds under the policy of insurance,

Plaintiff,

Case No.: 08 CIV
405 O

- against -

Assigned to
Judge Castel

GODFREY'S REFRIGERATION-AIR CONDITIONING INC.,

Defendant.

ANSWER

X

Defendant, GODFREY'S REFRIGERATION-AIR CONDITIONING INC., by
its attorneys, BIVONA & COHEN, P.C., as and for its Answer to plaintiffs'
Complaint, allege upon information and belief:

Nature of This Action

FIRST: Denies knowledge or information sufficient to form a
belief as to each and every allegation of the paragraph of the Complaint
designated "1", and respectfully refers all questions of law, fact and/or
conclusions raised therein to the Trial Court.

SECOND: Denies knowledge or information sufficient to form a
belief as to each and every allegation of the paragraph of the Complaint
designated "2", and respectfully refer all questions of law, fact and/or
conclusions raised therein to the Trial Court.

THIRD: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Complaint designated "3", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

FOURTH: Denies each and every allegation of the paragraph of the Complaint designated "4", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

The Jurisdiction

FIFTH: Denies each and every allegation of the paragraph of the Complaint designated "5", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

The Parties

SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraphs of the Complaint designated "6", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

SEVENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraphs of the Complaint designated "7", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Complaint designated "8", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

NINTH: Denies each and every allegation of the paragraph of the Complaint designated "9" except admits that the defendant was and still is a New York Corporation duly authorized to do business within the State of New York.

TENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Complaint designated "10", and respectfully refer all questions of law, fact and/or conclusions raised therein to the Trial Court.

ELEVENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Complaint designated "11", and respectfully refer all questions of law, fact and/or conclusions raised therein to the Trial Court.

The Loss

TWELFTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Complaint designated "12", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

THIRTEENTH: Denies each and every allegation of the paragraph of the Complaint designated "13", and respectfully reserves and refers all

questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FOURTEENTH: Denies each and every allegation of the paragraph of the Complaint designated "14", and respectfully reserves and refers all questions of law, fact and/or conclusions

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION
AGAINST DEFENDANT-NEGLIGENCE-**

FIFTEENTH: In response to paragraph "15" of the Complaint, this answering defendant repeats, reiterates and realleges each and every response to allegations of the paragraphs of the Complaint designated "1" through "14", as if more fully set forth at length herein.

SIXTEENTH: Denies each and every allegation of the paragraph of the Complaint designated "16", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

SEVENTEENTH: Denies each and every allegation of the paragraph of the Complaint designated "17", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

**AS AND FOR AN ANSWER TO A SECOND CAUSE OF ACTION
AGAINST DEFENDANT -BREACH OF CONTRACT-**

EIGHTEENTH: In response to paragraph "18" of the Complaint, this answering defendant repeats, reiterates and realleges each and every

response to allegations of the paragraphs of the Complaint designated "1" through "17", as if more fully set forth at length herein.

NINETEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Complaint designated "19", and respectfully refer all questions of law, fact and/or conclusions raised therein to the Trial Court.

TWENTIETH: Denies each and every allegation of the paragraph of the Complaint designated "20", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-FIRST: Denies each and every allegation of the paragraph of the Complaint designated "21", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

AS AND FOR AN ANSWER TO A THIRD CAUSE OF ACTION

AGAINST DEFENDANTS –BREACH OF IMPLIED WARRANTY-

TWENTY-SECOND: In response to paragraph "22" of the Complaint, this answering defendant repeats, reiterates and realleges each and every response to allegations of the paragraphs of the Complaint designated "1" through "21", as if more fully set forth at length herein.

TWENTY-THIRD: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the

Complaint designated "23", and respectfully refer all questions of law, fact and/or conclusions raised therein to the Trial Court.

TWENTY-FOURTH: Denies each and every allegation of the paragraph of the Complaint designated "24", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-FIFTH: Denies each and every allegation of the paragraph of the Complaint designated "25", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

AS AND FOR AN ANSWER TO A FOURTH CAUSE OF ACTION

AGAINST DEFENDANTS -STRICT PRODUCTS LIABILITY-

TWENTY-SIXTH: In response to paragraph "26" of the Complaint, this answering defendant repeats, reiterates and realleges each and every response to allegations of the paragraphs of the Complaint designated "1" through "25", as if more fully set forth at length herein.

TWENTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Complaint designated "27", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

TWENTY-EIGHTH: Denies each and every allegation of the paragraph of the Complaint designated "28", and respectfully reserves and

refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-NINTH: Denies each and every allegation of the paragraph of the Complaint designated "29", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

THIRTIETH: If any damages were sustained by the plaintiff at the time and place and in the manner alleged in the Complaint, such damages are attributable, in whole or in part, to the culpable conduct of the plaintiff, and if any damages are recoverable against this defendant, the amount of such damages shall be diminished in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

THIRTY-FIRST: The plaintiff's claim against the defendant should be dismissed because plaintiff's failed to mitigate, minimize or avoid the damages about which they now complain.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

THIRTY-SECOND: Plaintiff has not suffered any damages, and in any event, any losses or damages sustained by the plaintiff are de minimis, remote, speculative and/or transient and hence not cognizable at law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

THIRTY-THIRD: Upon information and belief, the answering defendants, **GODFREY'S REFRIGERATION-AIR CONDITIONING INC.** specifically denies ownership, operation, maintenance and control of the premises known as **BERND GOECKLER ANTIQUES INC.** as alleged in the Complaint.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

THIRTY-FOURTH: The Complaint herein fails to state a cause of action (as to the cause of action) upon which relief may be granted.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

THIRTY-FIFTH: Any damages allegedly sustained by the plaintiff were the result of defects in the steam humidifier, its design and manufacturer, and not as a result of any actions of the defendant.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

THIRTY-SIXTH: The plaintiff has failed to name necessary parties in that the plaintiff has failed to commence an action against the manufacturer, distributor and retailer of the steam humidifier in issue.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

THIRTY-SEVENTH: The plaintiff's claim against the defendant should be dismissed because the plaintiff's alleged damages are the result of intervening and superseding causes.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

THIRTY-EIGHTH: The defendant reserves the right to raise further and additional affirmative defenses as may become available upon the facts to be developed in discovery and under applicable substantive law.

JURY DEMAND

THIRTY-NINTH: The defendant demands a trial by jury on any and all issues that may be deemed so triable.

WHEREFORE, the defendant seeks the following relief:

- 1) dismissal of Plaintiff's Complaint and;
- 2) costs, disbursements and attorneys fees incurred in this action.

Dated: New York, New York.
May 23, 2008

Yours, etc.,

BIVONA & COHEN, P.C.
Attorneys for All Defendant
**GODFREY'S REFRIGERATION-AIR
CONDITIONING INC.**
Wall Street Plaza
88 Pine Street, 17th Floor
New York, New York 10005
(212) 363-3100

BY: 

RICHARD M. FEDROW
(RMF-2059)

TO:
SHEPS LAW GROUP, P.C.
Attorneys for Plaintiffs
35 Pinelawn Road, Suite 106E
Melville, New York 11747
(631) 249-5600
Your File No.: 6777

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

ESTA SEIDMAN, being duly sworn, hereby deposes and says as follows:

I am not a party to this action and I am over the age of eighteen (18) years and reside in Suffolk County, New York.

On May 23, 2008, I served the within **ANSWER** on the attorneys and parties listed below at the addresses designated by said attorneys and parties for that purpose, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post-office-official depository, under the exclusive care and custody of the United States Postal Service within New York State.


ESTA SEIDMAN

TO:
SHEPS LAW GROUP, P.C.
Attorneys for Plaintiffs
35 Pinelawn Road, Suite 106E
Melville, New York 11747
(631) 249-5600
Your File No.: 6777

Sworn to before me
May 23, 2008


NOTARY PUBLIC

RICHARD M. FEDROW
Notary Public, State of New York
No. 30-4618986
Qualified in Nassau County
Commission Expires May 31, 2011